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Mayor

CITY OF NEWTON, MASSACHUSETTS

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Public Hearing Date:	November 18, 2008
Land Use Action Date:	January 21, 2009
Board of Aldermen Action Date:	February 2, 2009
90-Day Expiration Date:	February 16, 2009

DATE: November 18, 2008

TO: Board of Aldermen

FROM: Michael Kruse, Director of Planning and Development
Candace Havens, Chief Planner
Alexandra Ananth, Senior Planner

SUBJECT: #378-08 MAYITA DE LA PENA petition for SPECIAL PERMIT/SITE PLAN APPROVAL for an accessory apartment within an existing legal two-family dwelling including construction of an outside staircase at 44 JEFFERSON STREET, Ward 1, NEWTON CORNER, on land known as Section 71, Block 7, Lot 11, containing approximately 9,861 sf of land in a district zoned MULTI RESIDENCE 2.

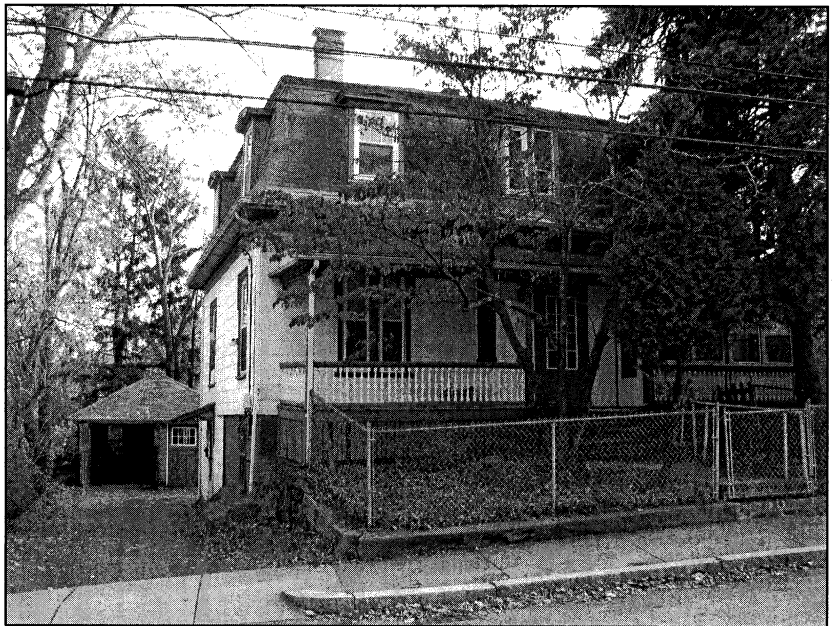
CC: Mayor David B. Cohen

The purpose of this memorandum is to provide the Board of Aldermen and the public with technical information and planning analysis which may be useful in the special permit decision making process of the Board of Aldermen. The Planning Department's intention is to provide a balanced view of the issues with the information it has at the time of the public hearing. There may be other information presented at or after the public hearing that the Land Use Committee of the Board of Aldermen will want to consider in its discussion at a subsequent Working Session.

EXECUTIVE SUMMARY

The site consists of an approximately 10,000 sq.ft. lot improved with a Victorian style residence that was converted to a legal two-family structure in 1975. In December 1998, the owner applied for and received a special permit (*SEE ATTACHMENT "A"*) to construct an accessory apartment and exterior second means of egress on the second floor of this structure. This special permit was approved but never exercised and has since expired. The petitioner is again proposing to create an accessory apartment within the top floor of this home with an exterior stairway to provide a second means of egress from the second floor apartment.

Section 30-9(h) provides that the Board of Aldermen may grant a special permit for an accessory apartment in a Multi-Residence District provided a minimum lot size and building size are met. The petitioner meets these and other relevant requirements. As there will be no changes to the structure or lot except for the exterior second means of egress the proposed apartment should have minimal impact on the neighborhood. The creation of an additional residential unit is consistent with the *Newton Comprehensive Plan*, adopted



by the Board of Aldermen on November 19, 2007. Should the Board of Aldermen choose to approve this request for special permit, the Planning Department strongly recommends that the petitioner install some landscaping to help screen exterior parking stalls.

I. SIGNIFICANT ISSUES FOR CONSIDERATION

In reviewing this petition the Board of Aldermen should consider whether the following findings apply:

- ◆ Convenience and safety of vehicular and pedestrian movement within the site to adjacent streets will not be adversely impacted as a result of the proposed accessory apartment;
- ◆ Parking areas are adequately screened;
- ◆ Proposed exterior landings and stairs are appropriate to the structure and unobtrusive to the neighborhood; and
- ◆ The accessory apartment use is consistent with the *Newton Comprehensive Plan*.

II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

A. Neighborhood and Zoning

This portion of Jefferson Street is located within 500 feet of the Watertown line in Newton Corner. The neighborhood is predominately occupied by single- and two-family dwellings. The average lot size in the immediate neighborhood is approximately 6,000 sq.ft., although there are some larger lots in the area.

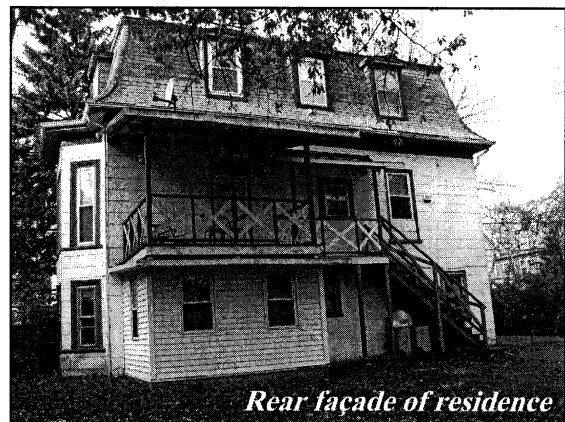
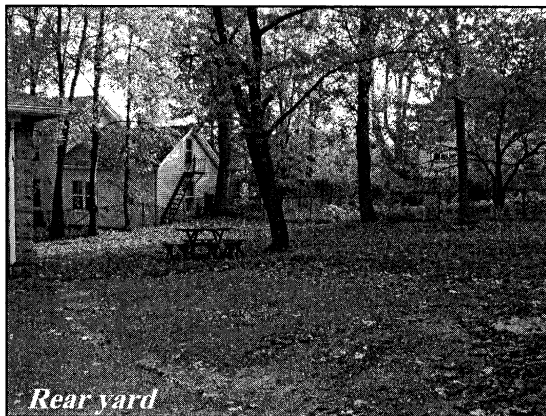
Jefferson Street is a one-way street proceeding eastbound. This section of Newton Corner is almost entirely zoned Multi-Residence 2. The commercial area along Centre Street is approximately one-half mile from the site. There are a number of public transportation alternatives in Newton Corner within easy reach of the petitioner's site.

B. Site

The site is a rectangular shaped lot of approximately 10,000 sq.ft. along the southerly side of Jefferson Street in Newton Corner. There are two small strips of land owned by the City of Newton adjacent to the westerly and southerly property lines giving the appearance of a slightly larger lot, although a four-foot chain link fence surrounds the property.

The existing house was built in approximately 1870. Presently there is a one-bedroom apartment on the basement/ground floor and the petitioner occupies the first and second floors. The petitioner has previously rented out rooms to lodgers on the second floor and is now seeking to create a legal accessory apartment on this floor.

Parking consists of a paved area behind the house as well as a two-car garage. There are numerous trees and a sizable amount of usable open space on the lot. The house and garage are in fair condition and showing signs of age.



III. PROJECT DESCRIPTION AND ANALYSIS

A. Land Use

The proposed accessory apartment should result in minimal change in the neighborhood. Previously, the upper floor space was occupied by three single-room occupants, which would be used as a single accessory apartment. Over the long term this is likely to create a more stable and consistent residential unit which should be a benefit to the immediate neighborhood.

The average lot area per unit in the immediate neighborhood is just over 4,000 sq.ft., and the subject property would contain approximately 3,333 sq.ft. per unit.

B. Building and Site Design

With the exception of an exterior stairwell for egress, the entire unit is located within the second floor of the existing structure. The accessory apartment would consist of two bedrooms, a living room, bathroom and kitchen and totaling approximately 1,050 sq.ft. A new door in place of an existing window would lead to the proposed exterior stairway on the rear façade and will connect to the roof of the first floor porch and existing exterior stair.

C. Parking and Circulation

One driveway serves the site with parking for up to five cars, including two garage stalls and three exterior parking stalls. Site plans show one stall adjacent to the existing garage and two stalls adjacent to the existing one-story porch. It is not clear if the petitioner is proposing to expand the impervious area for the proposed exterior stalls or if the stalls will be located only partially on pervious surface. The petitioner should be expected to clarify this point at the public hearing. The existing driveway and parking area are in poor condition and should be resurfaced, otherwise parking and circulation appears safe.

D. Landscape Screening, Lighting, and Signage

The petitioner is not proposing additional screening on site; however, the Planning Department strongly encourages the petitioner to consider some low evergreen screening buffering proposed exterior stalls from adjacent views.

IV. COMPREHENSIVE PLAN

The November 2007 *Newton Comprehensive Plan* seeks to guide development to reflect the character held or sought by existing residential neighborhoods, protecting the qualities “*of that which exists.*” Although the Planning Department is concerned with the proposed density of this project structure, the proposed accessory apartment should help ensure maintenance of the residence, provide diversity in the housing stock and create a more

stable neighborhood. The small addition for egress is in keeping with the architecture of the existing building and should not negatively impact abutters.

V. TECHNICAL REVIEW

A. Technical Considerations (Table 30-8 and Section 30-9(h)). In all Multi-Residence 1 and 2 districts, accessory apartments are subject to the special permit process and the provisions of Table 30-8, *Dimensional Requirements for Accessory Apartments*, and the provisions of Section 30-9(h)(1). The proposed accessory apartment appears to meet all requirements.

B. Parking Requirements (Section 30-19). The proposed use has a parking requirement of five parking stalls. Although it appears the petitioner is able to meet the required number of stalls as mentioned earlier, the petitioner should clarify whether or not they will be adding any new impervious surface to the site.

C. Other Reviews

No other departments need to review this petition.

VI. ZONING RELIEFS SOUGHT

Based on the completed zoning review, dated July 23, 2008 (*SEE ATTACHMENT "B"*), the petitioner is seeking approval through or relief from:

- Section 30-9(h)(1) for an accessory apartment in a legal two-family owner-occupied residence in an MR2 zone;
- Section 30-23 for Site Plan Approval; and
- Section 30-24(d) for approval of Special Permits.

VII. Summary of Petitioner's Responsibilities

At the November 18 public hearing, the petitioners should be expected to respond to all issues raised in this memorandum prepared by the Planning and Development Department including a statement regarding which parking areas are pervious and impervious.

ATTACHMENTS:

ATTACHMENT A: BOARD ORDER #329-98, DATED DECEMBER 7, 1998

ATTACHMENT B: ZONING REVIEW, DATED JULY 23, 2008

ATTACHMENT C: ZONING MAP

ATTACHMENT D: LAND USE MAP

ATTACHMENT E: SITE PLAN

#329-98

1998 DEC 11 PM 2:05
CITY CLERK
NEWTON, MA 02159

CITY OF NEWTON
IN BOARD OF ALDERMEN

December 7, 1998

ORDERED:

That the Board, finding that the public convenience and welfare will be substantially served by its action and that said action will be without substantial detriment to the public good, and without substantially derogating from the intent or purpose of the Zoning Ordinance, the following SPECIAL PERMIT/SITE PLAN APPROVAL is hereby granted, in accordance with the recommendation of the Land Use Committee and the reasons given by the Committee therefor, through its Chairman, Alderman Susan M. Basham:

1. The Board finds that this approval will permit additional housing.

PETITION NUMBER: 329-98

PETITIONER: Enriqueta De La Pena

LOCATION: 44 Jefferson Street, Ward 1, Section 71, Block 7, Lot 11,
containing approximately 9,861 sq. ft. of land

OWNER: Enriqueta De La Pena

ADDRESS OF OWNER: 44 Jefferson Street
Newton Corner, MA 02458

TO BE USED FOR: An accessory apartment containing approximately 1,050 sq.
ft.

CONSTRUCTION: Interior and the construction of an exterior second means
of egress.

EXPLANATORY NOTE: Section 30-9(h)(2) allows the Board of Aldermen to grant
a special permit for an accessory apartment in a legal two-
family owner occupied dwelling which means both the
minimum lot size and building size requirements.

Land referred to is in a Multi-Residence 2 District.

Approved, subject to the following conditions:

1. That all buildings, parking areas, driveways, walkways, landscaping and other site features shall be located and constructed consistent with plans entitled, "Plan of Land in Newton, Mass, by Mass Bay Survey, and "Modifications to: 44 Jefferson St. Newton, MA 02158" by Cesar Calderone, dated 9/15/98 and revised Nov. 12/98, submitted by the petitioner and filed herewith.
2. That the paved parking area should not be increased in size.
3. That the petitioner use best efforts to preserve and maintain the existing trees on the perimeter of the site.
4. That the exterior stairway shall be stained, painted or treated to blend with the facade of the building.
5. That one of the units in the residence shall be owner occupied and there shall be no lodgers in any of the units.
6. That no building permit shall be issued in pursuance of the SPECIAL PERMIT/SITE PLAN APPROVAL and SITE PLAN APPROVAL until:
 - a. The petitioner shall have recorded with the Registry of Deeds for the Southern District of Middlesex County a Certified copy of this Board Order granting this SPECIAL PERMIT/SITE PLAN APPROVAL with appropriate reference to the book and page of the recording of the Petitioner's title deed or notice of lease endorsed thereon.
 - b. A certified copy of such recorded notice shall have been filed with the City Clerk, the Inspectional Services Department and the Department of Planning and Development.
7. That no portion of subject to this SPECIAL PERMIT/SITE PLAN APPROVAL shall be occupied until:
 - a. The exterior second means of egress has been completed.

Under Suspension of Rules


Readings Waived and Approved

21 yeas 0 nays 3 absent (Ald. M. Lipof, R. Lipof, Tattenbaum)

The undersigned hereby certifies that the foregoing copy of the decision of the Board of

Aldermen granting a SPECIAL PERMIT/SITE PLAN APPROVAL is a true accurate copy of said decision, the original of which having been filed with the CITY CLERK on December 11, 1998. The undersigned further certifies that all statutory requirements for the issuance of such SPECIAL PERMIT/SITE PLAN APPROVAL have been complied with and that all plans referred to in the decision have been filed with the City Clerk.

ATTEST:



(SGD) EDWARD G. ENGLISH, City Clerk
Clerk of the Board of Aldermen

I, Edward G. English, as the Clerk of the Board of Aldermen and keeper of its records and as the City Clerk and official keeper of the records of the CITY OF NEWTON, hereby certify that Twenty days have elapsed since the filing of the foregoing decision of the Board of Aldermen in the Office of the City Clerk on 12/11/98 and that NO APPEAL to said decision pursuant to M.G.Laws Chapter 40, Section 17 has been filed thereto.

ATTEST




EDWARD G. ENGLISH, City Clerk

Zoning Review Memorandum

ATTACHMENT B

Dt: July 23, 2008

To: John Lojek, Commissioner of Inspectional Services

Fr: Eve Tapper, Chief Zoning Code Official
Candace Havens, Chief Planner 

Cc: Michael Kruse, Director, Department of Planning and Development
Mayita de la Pena, property owner
Ouida Young, Associate City Solicitor

RE: Request to construct an accessory apartment in an existing two-family structure

Applicant: Mayita de la Pena

Site: 44 Jefferson Street

SBL: Section 71, Block 7, Lot 11

Zoning: M-R2

Lot Area: 9,861 sq. ft.

Current use: two-family residence

Prop. use: add an accessory apartment containing approximately 1,050 sq. ft. and construct an exterior second means of egress

Background:

The subject property consists of a 9,861 square foot lot currently improved with a two-family residence. On December 7, 1998, the Board of Aldermen approved a special permit/ site plan (Petition# 329-98) to construct an accessory apartment and an exterior second means of egress. This special permit was never exercised and has since expired.

The current application is a request by the same applicant who is again proposing to construct an accessory apartment and an exterior second means of egress. The applicant will need to seek a special permit pursuant to §30-9(h)(1) for an accessory apartment in a two-family structure.

Administrative determinations:

1. The subject site is located in the M-R2 zone and, in order to be eligible for an accessory apartment, must meet the requirements of §30-9(h)(1) and Table 30-8. The applicant supplied a copy of the previously-issued special permit and the accompanying Planning Department staff report from 1998, but did not submit current or past site plans. The architectural plans submitted for the existing and proposed floor plans and elevations bear no official architect's stamp. The information analyzed for this zoning review is taken from the reports submitted. This information should be confirmed and, where applicable, included on a site plan showing the layout of the building and parking in any future application for a special permit. Without a site plan it is impossible to determine if there are any zoning issues associated with the location of the parking spaces on the site, although the previous review and special permit make no mention of any problems.

2. The following table sets forth the requirements for this project. From the information provided, the subject property appears to comply with all necessary requirements. *As noted above, more detailed information should be submitted in any subsequent applications to verify these assumptions.*

MR2 Acc. Apartment Requirement	Required	Existing	Proposed
Lot Area (Table 30-8)	8,000 sq. ft.	9,861 sq. ft.	N/C
Building size (Table 30-8)	2,600 sq. ft.	3,230 sq. ft.*	N/C
Two-family dwelling (§30-9(h)(1)(b))	Constructed on or before January 1, 1989	Structure built in 1870, converted to a legal two-family dwelling in 1975	N/C
Size of accessory apartment (§30-9(h)(1)(c))	Minimum: 400 sq. ft. Maximum 1,200 sq. ft.	N/A	1,050 sq. ft.
Number of parking spaces (§30-19(d)(1) and (19))	5	5	5

* The 1998 Planning Department report states the building size as 3,230 sq. ft. The City of Newton's Assessor's database reports the building size as 2,222 sq. ft. plus a finished basement of 540 sq. ft. for a total of 2,762 sq. ft. Per architectural plans provided by the applicant, the basement level is currently used as the second dwelling unit so it appears as though the building would comply with the size requirement either way. *However, this discrepancy should be resolved and documented in any future special permit application.*

3. The following table outlines the zoning relief required for the project:

Zoning Relief Summary		
Ordinance		Action Required
	Accessory Apartment	
§30-9(h)(1)	Special Permit for an accessory apartment in a legal two-family owner-occupied dwelling in the MR-2 zone	X
	Site	
30-23	Site plan approval	X
	Special Permit	
30-24(d)	Approval of special permit	X

Plans and materials reviewed:

- City of Newton, Board of Aldermen order #329-98 for approval of a Special Permit/ Site Plan for an accessory apartment at 44 Jefferson Street, dated 12/7/98.
- Planning and Development Department memorandum from 1998 regarding Special Permit petition #329-98.
- "Modifications to: 44 Jefferson St., Newton, MA, Existing floor plans" dated 9/15/98, drawn by C.A.C. and bearing no official architect's stamp.
- "Modifications to: 44 Jefferson St., Newton, MA, 1st and 2nd floor plan and rear elevation" dated 9/15/98, drawn by C.A.C. and bearing no official architect's stamp.

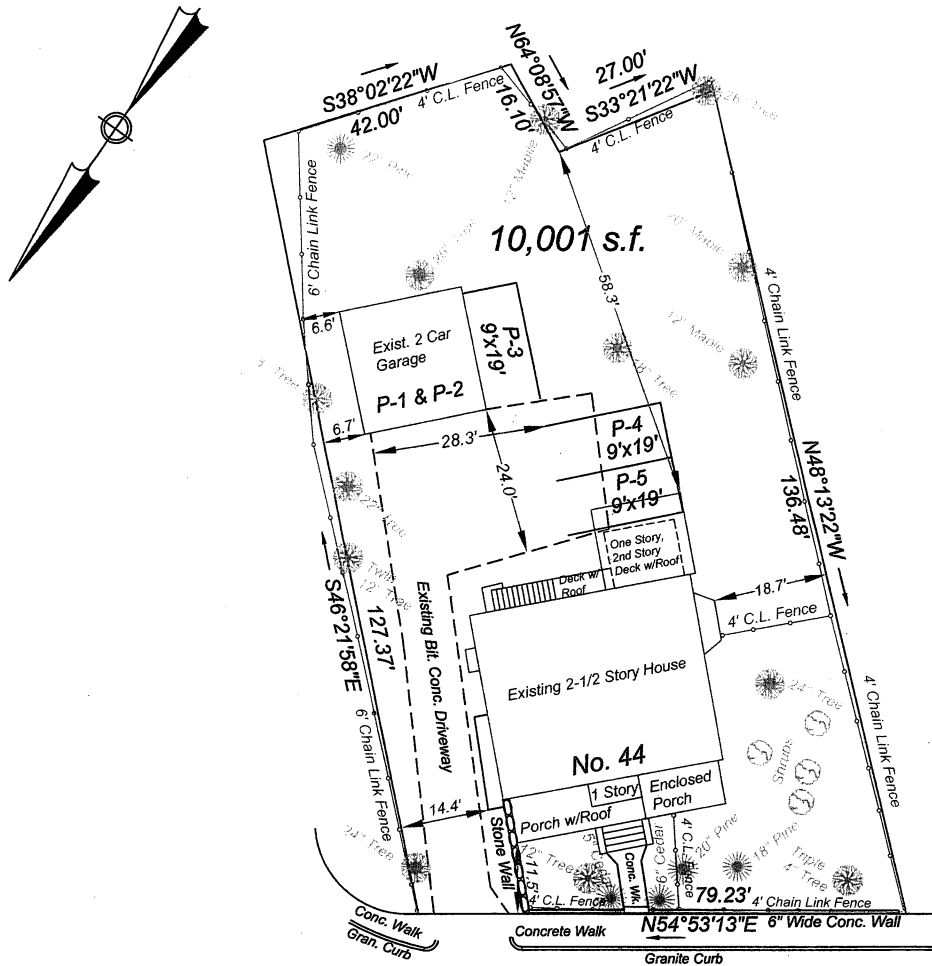
Land Use Map

44 Jefferson St.



Legend

- 44 Jefferson St.
- House Numbers
- Building Footprints
- Single Family Residential
- Multifamily Residential
- Commercial
- Industrial
- Mixed Use
- Vacant Land
- Golf Course
- Open Space
- Private Educational
- Nonprofit Organizations
- Public Housing
- Tax Exempt
- Project Boundaries



Jefferson (Public 30' - Wide) **Street**

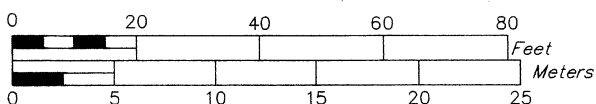
Zone: MR-2 (Old Lot)

	Required	Existing	Proposed
Min. Lot Size	* 8,000 s.f.	10,001 s.f.	10,001 s.f.
Height/Stories	2-1/2	2-1/2	2-1/2
Max. Lot Coverage	30%	20.1%	20.1%
Min. Open Space	50%	66.2%	62.4%
Setbacks			
Front	25 ft.	11.5 ft.	11.5 ft.
Side	7.5 ft.	14.4 ft.	14.4 ft.
Rear	15 ft.	58.3 ft.	58.3 ft.

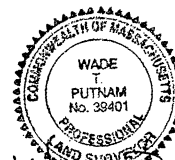
* Requirement for approval of Accessory Apartment.

Deed: Book 16,462, Page 102
Plan: Plan Book 16B, Plan 50

GRAPHIC SCALE



To obtain meters, multiply feet by 0.3048



Wade T. Putnam

Plan of Land

IN **Newton, Massachusetts**

AT **44 Jefferson Street**

Owned by: **Enriqueta de la Pena**
A.K.A. Mayita Delcarmen de la Pena

Scale: 1 inch = 20.00 feet

September 24, 2008

Wade T. Putnam

Professional Land Surveyor

12 Nutting Road

Waltham, Mass. 02451-3113

Phone (617) 924-7877

Email: rah55@comcast.net